



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 25 October 2004
DH-S-TER(2004)012

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GROUP OF SPECIALISTS ON HUMAN RIGHTS AND THE FIGHT
AGAINST TERRORISM**

(DH-S-TER)

REPORT

2nd meeting, 13-15 October 2004

Item 1: Opening of the meeting and adoption of the agenda

1. The Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER) held its second meeting in Strasbourg on 13-15 October 2004, with Mr. Philippe BOILLAT (Switzerland) in the chair. The list of participants is contained in [Appendix I](#). The agenda, as adopted, is contained in [Appendix II](#).
2. The meeting was devoted to further work on preparation of preliminary draft guidelines on protection of the victims of acts of terrorism. The text adopted by the DH-S-TER on conclusion of its work is contained in [Appendix III](#).

Item 2: Elaboration of guidelines on the protection of victims of terrorist acts

3. The DH-S-TER held a preliminary exchange of views with Mrs Jane DINSDALE, Director of Human Rights, on the new context of the Council of Europe's work on protection of the victims of acts of terrorism. In fact, Mrs Dinsdale underlined that since [the CDDH](#) had decided to prepare guidelines, the general context had changed radically, particularly as a result of recent tragic events. The [Committee of Ministers](#) was currently looking closely at ways of focusing the [Council of Europe's](#) work on action against terrorism more effectively, as well as intensifying and expediting it. The same applied to the [Parliamentary Assembly](#). The question of victims was one of the most important here, and the results of the CDDH's work were awaited with great interest (see, inter alia, the decisions taken by the Ministers' Deputies at their 895th (15 September 2004) and 899th (13 October 2004) meetings, and by the Parliamentary Assembly in its [Recommendation 1677\(2004\)](#) and [Resolution 1400\(2004\)](#)).
4. Mrs Dinsdale considered that the expectations of the Committee of Ministers and the Parliamentary Assembly made it necessary to adopt guidelines on protection of victims of terrorist acts which took account of this new context and, as far as possible, really contributed something new, instead of simply relating the present situation to the Court's case-law. Their aim should be, not simply to secure better protection for victims of terrorist acts in Europe, but also to make a significant European contribution to the work at present being done in various quarters on stemming the international scourge of terrorism and, more particularly, protecting victims.
5. The basis of the DH-S-TER's work was the text retained at the end of the first meeting ([DH-S-TER\(2004\)007](#), Appendix III), in the light of the proposals made by the members of the CDDH ([DH-S-TER\(2004\)009](#)), the Chair of the DH-S-TER ([DH-S-TER\(2004\)011](#)) and the Secretariat ([DH-S-TER\(2004\)014](#)).
6. The draft text adopted by the DH-S-TER on concluding its work is contained in [Appendix III](#). In sending it to the CDDH for adoption at the 59th meeting (23-26 November 2004), the Group of Specialists considers that it has fulfilled the terms of reference given it by the Steering Committee (58th meeting, 15-18 June 2004, [CDDH\(2004\)020](#), §34).

Item 3: Other business

7. The DH-S-TER members warmly thanked the Chair, Mr Philippe BOILLAT (Switzerland), for the excellent manner with which he led the work of the Group, which notably made it possible to have it completed within the given deadline.

* * *

Appendix I**List of participants / Liste des participants****BELGIUM / BELGIQUE**

Apologised/Excusé

BULGARIA / BULGARIE

Mrs Detelina STAMBOLOVA, Chief Expert, Human Rights and International Humanitarian Organisations Directorate, Ministry of Foreign Affairs, 2 Alexander Zhendov Str., 1032 SOFIA

CROATIA / CROATIE

Ms Lora VIDOVIĆ, Third Secretary, Human Rights Department, Ministry of Foreign Affairs, Trg N.Š. Zrinskog 7-8, 10 000 ZAGREB

FRANCE

M. Frédérik ROGGE, Conseiller des Affaires étrangères, Agent-adjoint du Gouvernement, Sous-direction des Droits de l'Homme, Direction des affaires juridiques, Ministère des Affaires étrangères, 37 Quai d'Orsay, 75007 PARIS

GERMANY / ALLEMAGNE

Mr Heiko BRÜCKNER, Executive Assistant to the Agent for Human Rights, Federal Ministry of Justice, Mohrenstrasse, D-10117 BERLIN

GREECE / GRECE

Mme Catherine VASSILIKOU, Chercheur principal, Académie d'Athènes, 28, Panepistimiou, 10679 ATHENS

ITALY / ITALIE

M. Vitaliano ESPOSITO, Agent du Gouvernement, Premier Avocat Général, Cour de Cassation, Palais de justice, Piazza Cavour, I-00193 ROME

LATVIA / LETTONIE

Ms Inga REINE, Representative of the Government of Latvia before International Human Rights Organizations, Ministry of Foreign Affairs, Brivibas blvd 36, RIGA LV 1395

NETHERLANDS / PAYS-BAS

Ms Olivia SWAAK-GOLDMAN, Senior Legal Adviser, Ministry of Foreign Affairs, Dept. DJZ/IR, P.O. Box 20061, 2500 EB THE HAGUE

POLAND / POLOGNE

Mr Michal BALCERZAK, Legal Adviser, Ministry of Foreign Affairs, Aleja Szucha 23, WARSAW 00950

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Yury BERESTNEV, Head of the Department State legal Directorate of the President of the Russian Federation, Chief of the Bureau of the Representative of the Russian Federation at the European Court of Human Rights, 8./4 Ilyinka street, 103132 MOSCOW

SPAIN / ESPAGNE

Ms Dolores de COSPEDAL, Spanish Agent, European Court for Human Rights, Ministry of Justice, c/Marqués del Duero, 6, E-28001 MADRID

SWITZERLAND / SUISSE (Chairman/Président)

M. Philippe BOILLAT, Agent du Gouvernement, Sous-Directeur de l'Office fédéral de la justice, Chef de la division des affaires internationales, CH-3003 BERNE

TURKEY / TURQUIE

Mme Deniz AKÇAY, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe, 23, boulevard de l'Orangerie, F-67000 STRASBOURG

Mr Ali Baris ULUSOY, Third Secretary, Deputy Directorate General for Council of Europe and Human Rights, Ministry for Foreign Affairs, Disisleri Bakanliđi, Balgat, 06100 ANKARA

UNITED KINGDOM / ROYAUME-UNI

Ms Emily WILLMOTT, Assistant Legal Adviser, Foreign and Commonwealth Office, King Charles Street, LONDON SW1 2AH

* * *

OBSERVERS / OBSERVATEURS

PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE

Mr David MILNER, Secrétaire Adjoint de la Commission des questions juridiques et des droits de l'homme de l'Assemblée parlementaire / Deputy Secretary of the Committee on legal affairs and human rights of the Parliamentary Assembly

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Apologised/excusé

HOLY SEE / SAINT-SIEGE

R. Père Alexis PAULY, Mission du Saint-Siège auprès du Conseil de l'Europe, 2, rue Le Nôtre, F-67000 STRASBOURG

Office of the High Commissioner for Human Rights of the United Nations / Bureau du Haut-Commissaire aux Droits de l'Homme des Nations Unies

Ms Lucie VIERSMA, Human Rights Officer, Rule of Law and Democracy Unit, United Nations Office of the High Commissioner for Human Rights, Palais Wilson, 52 rue des Paquis, CH-1211 GENEVA 10

Office for Democratic Institutions and Human Rights (ODIHR-OSCE)/Bureau des institutions démocratiques et des droits de l'homme (BIDDH-OSCE)

Apologised/excusé

Committee of Experts on Terrorism (CODEXTER) / Comité d'experts sur le terrorisme (CODEXTER)

Mr Martin SORBY, Assistant Director General, Legal Department, Ministry of Foreign Affairs, P.O. Box 8114 Dep, N-0032 OSLO

Commission for the Efficiency of Justice (CEPEJ) / Commission pour l'efficacité de la justice (CEPEJ)

M. Stéphane LEYENBERGER, Secretary of the CEPEJ/Secrétaire de la CEPEJ

M. José-Maria FERNANDEZ-VILLALOBOS, Administrator/Administrateur

Amnesty International

Apologised/excusé

International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)

Apologised/Excusé

International Federation of Human Rights / Fédération internationale des Ligues des Droits de l'Homme

Apologised / excusé

European Coordinating Group for National Institutions for the promotion and protection of human rights / Groupe européen de coordination des institutions nationales pour la promotion et la protection des droits de l'homme

Mme Stéphanie DJIAN, Chargée de Mission, Commission Nationale Consultative des Droits de l'Homme, 35 rue Saint-Dominique, F-75700 PARIS

* * *

SECRETARIAT

Directorate General of Human Rights - DG II / Direction Générale des Droits de l'Homme – DG II, Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex

Ms Jane DINSDALE, Director of the Directorate I / Directrice de la Direction I

M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'homme, Secretary of the Committee / Secrétaire du Comité

M. Mikaël POUTIERS, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

Mme Michèle COGNARD, Assistant / Assistante

Interpreters/Interprètes:

Mme Corinne McGEORGE

Mme Bettina LUDEWIG

* * *

Appendix II

Agenda

Item 1: Opening of the meeting and adoption of the agenda

Item 2: Elaboration of guidelines on the protection of victims of terrorist acts

Working documents

- Protection of victims of terrorist acts: Elements for the CDDH with a view to expand the Guidelines on human rights and the fight against terrorism – State of play [CDDH\(2004\)016rev](#)
- Protection of victims of terrorist acts: Elements with a view to the elaboration of guidelines [DH-S-TER\(2004\)001](#)
- Extracts from the report of the 58th meeting of the CDDH (15-18 June 2004) and of the 893rd meeting of the Ministers' Deputies (13 July 2004) [DH-S-TER\(2004\)002](#)
- Report of the 1st meeting of the DH-S-TER (1-3 September 2004) [DH-S-TER\(2004\)007](#)
- Comments, drafting proposals as well as proposals for amendments of the CDDH and DH-S-TER members on the elements for preliminary draft guidelines retained during the 1st meeting [DH-S-TER\(2004\)009](#)
- Preliminary draft guidelines on the protection of victims of terrorist acts: Chairman's proposals [DH-S-TER\(2004\)011](#)
- Preliminary draft guidelines on the protection of victims of terrorist acts: Proposals made by the Secretariat of Directorate General of Human Rights (DG II) [DH-S-TER\(2004\)014](#)

Information documents

- Guidelines on human rights and the fight against terrorism (11 July 2002) [H \(2002\) 4](#)
- Madrid Declaration, adopted at the end of the First [DH-S-](#)

- International Congress of Victims of Terrorism, Madrid, 27 January 2004 [TER\(2004\)003](#)
- Recommendations No. R (87) 21, R (85) 11 and R (83) 7 of the Committee of Ministers [DH-S-TER\(2004\)004](#)
 - Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) [DH-S-TER\(2004\)005](#)
 - Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) [DH-S-TER\(2004\)006](#)
 - Council of the European Union Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims [DH-S-TER\(2004\)008](#)
 - Draft Declaration on freedom of expression and information in the media in the context of the fight against terrorism (currently examined by the CDMM) [DH-S-TER\(2004\)010](#)
 - Recommendation 1677 (2004) and Resolution 1400 (2004) adopted by the Parliamentary Assembly on 6 October 2004 and report of the Political Affairs Committee [DH-S-TER\(2004\)013](#)

Item 3: Other business

* * *

Appendix III

Preliminary draft guidelines

of the Committee of Ministers to member States on the Protection of victims of terrorist acts

(State of progress of the work made by the DH-S-TER on 15 October 2004)

Preamble

The Committee of Ministers,

[a] Considering that terrorism seriously jeopardises human rights, threatens democracy, aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and challenges the ideals of everyone to live free from fear;

[b] Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed;

[c] Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must especially be shown national and international solidarity and support;

[d] Reaffirming the Guidelines on Human Rights and the Fight against Terrorism, adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies, as a permanent and universal reference;

[e] Underlining in particular the States' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;

[f] Recalling also that all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision;

[g] Considering that the present Guidelines aim at addressing the needs and concerns of the victims of terrorist acts in identifying the means to be implemented to help them and to protect their fundamental rights while excluding any form of arbitrariness, as well as any discriminatory or racist treatment;

[h] Considering that the present Guidelines should not, under any circumstances, be construed as restricting in any way the Guidelines of 11 July 2002;

adopts the following guidelines and invites member States to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism and for the protection of the victims of terrorist acts, as well as among representatives of civil society.

I. Principles

1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act can benefit from the services and measures prescribed by these Guidelines. States should also, in appropriate circumstances, ensure their availability to the victim's close family.
2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.
3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment.

II. Emergency assistance

States should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to victims of terrorist acts in order to cover their immediate needs; they should also allow victims, on their request, to have access to spiritual assistance.

III. Continuing assistance

States should provide for appropriate continuing medical, psychological, social and material assistance for victims of terrorist acts; if the victim does not normally reside on the territory of the State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance.

IV. Investigation

1. Where there have been victims of terrorist acts, States must launch an effective official investigation into those acts.
2. In this framework, special attention must be paid to victims, and, where appropriate, to their close family, without it being necessary for them to have made a formal complaint.
3. In cases where it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should allow victims to ask for this decision to be re-examined by a competent authority.

V. Effective access to the law and to justice

States should provide effective access to the law and to justice for victims of terrorist acts by providing:

- (i) the right of access to competent courts in order to bring a civil action in support of their rights, and
- (ii) legal aid in appropriate cases.

VI. Administration of justice

1. States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent tribunal within a reasonable time.
2. States should ensure that the position of victims of terrorist acts is adequately recognised in criminal proceedings.

VII. Compensation

1. Victims of terrorist acts should receive fair and appropriate compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality.
2. Compensation should be easily accessible to victims, irrespective of nationality, and, in appropriate circumstances, to their close family. To this end, the State on the territory of which the terrorist act happened should introduce a mechanism allowing for a fair and appropriate compensation, after a simple procedure and within a reasonable time.
3. States should also facilitate administrative co-operation with the competent authorities of the member State on the territory of which a terrorist act happened to facilitate access to compensation of their nationals.
- [4. States whose nationals were victims of a terrorist act on the territory of a non-member State should contact the competent authorities of this State with a view to cooperating in order to facilitate access to compensation of these persons.]

5. Apart from the payment of pecuniary compensation, States are encouraged to consider, depending on the circumstances, other forms of [compensation] [reparation] [satisfaction].

VIII. Protection of the private and family life of victims of terrorist acts

1. States should take appropriate steps to avoid undermining respect for the private and family life of victims of terrorist acts in any way, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims.
- [2. In addition, States should encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims of terrorist acts in the framework of their information activities.¹]
3. Victims of terrorist acts must have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.

IX. Protection of the dignity and security of victims of terrorist acts

1. At all stages of the proceedings, victims of terrorist acts should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity.
2. States must ensure the protection, security and anonymity of victims of terrorist acts, in particular where they intervene as witnesses.

X. Information of the victims of terrorist acts

States should give information, according to appropriate measures, to victims of terrorist acts about the act of which they suffered, except in the case where victims indicate that they do not wish to receive such information. For this purpose, States should:

- (i) set up appropriate information contact points for the victims, concerning in particular their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation;

¹ This wording, which should be examined further during the 59th meeting of the CDDH (23-26 November 2004), is close in particular to that of the draft Declaration on freedom of expression and information in the media in the context of the fight against terrorism currently examined by the Steering Committee of the Mass Media ([CDMM](#)).

- (ii) ensure the provision to the victims, if they wish so, of appropriate information in particular about the investigations, the final decision concerning in particular prosecution, the date and place of the hearings, the conditions under which they may acquaint themselves with the decisions handed down.

XI. Specific training for persons responsible for assisting victims of terrorist acts

States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.

XII. Increased protection

Nothing in these Guidelines restrains States from adopting more favourable services and measures than described in these Guidelines.

* * *

Texts of reference²

*Used for the preparation of the
Guidelines on the protection of victims of terrorist acts*

Preliminary note

This document was prepared by the Secretariat, in co-operation with the Chairman of the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER). **It is not meant to be taken as an explanatory report or memorandum of the Guidelines.**

Preamble

The Committee of Ministers,

[a] Considering that terrorism seriously jeopardises human rights, threatens democracy, aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society and challenges the ideals of everyone to live free from fear;

1. The first part of this paragraph repeats paragraph [a] of the Preamble of the Guidelines adopted in July 2002. The phrase “free from fear” finds its origin in the second paragraph of the Preamble of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in its resolution 217 A (III) of 10 December 1948.

[b] Unequivocally condemning all acts of terrorism as criminal and unjustifiable, wherever and by whomever committed;

2. The wording repeats that of paragraph [b] of the Preamble of the July 2002 Guidelines.

[c] Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must especially be shown national and international solidarity and support;

² These texts of reference will probably be modified at a later stage.

[d] Reaffirming the Guidelines on Human Rights and the Fight against Terrorism, adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies, as a permanent and universal reference;

[e] Underlining in particular the States' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;

[f] Recalling also that all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision;

3. This paragraph repeats Guideline II of July 2002.

4. In this context, *the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism* of 17 March 2004 should be recalled.

[g] Considering that the present Guidelines aim at addressing the needs and concerns of the victims of terrorist acts in identifying the means to be implemented to help them and to protect their fundamental rights while excluding any form of arbitrariness, as well as any discriminatory or racist treatment;

5. [Recommendation 1426 \(1999\)](#) of the [Parliamentary Assembly](#) of the Council of Europe on *European democracies facing up to terrorism* of 23 September 1999, asks that the Committee of Ministers consider “the incorporation of the principle of fuller protection for victims of terrorist acts at both national and international level”;

6. More recently, [Recommendation 1677 \(2004\)](#) and *Resolution 1677 (2004)* of the Parliamentary Assembly on the *Challenge of terrorism in Council of Europe member States* of 6 October 2004 should be recalled. The first one asks the Committee of Ministers to “finalise as soon as possible the elaboration of guidelines on the rights of victims and the corresponding duties of member States to provide all necessary assistance and to create a forum for the exchange of good practice and training experiences between member States”. The second one “calls on national parliaments to (i.) adopt an integrated and co-ordinated approach to countering terrorism at all its stages, including drawing up a legislative framework aimed at: (...) (d.) protecting, rehabilitating and compensating victims of terrorist acts”.

7. Moreover, *Resolution No. 1 on Combating international terrorism*, adopted by the Ministers at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001) invites the Committee of Ministers to “c) (review) existing or, where necessary, (adopt) new rules concerning: (...) iv. the improvement of the protection, support and compensation of victims of terrorist acts and their families”. *Resolution*

No. 1 on Combating terrorism adopted by the Ministers at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003) reiterates this invitation.

8. Finally, paragraph 1 of *the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 8 on Combating Racism while Fighting Terrorism* of 17 March 2004 recommends to governments of member States “to take all adequate measures, especially through international co-operation, (...) to support the victims of terrorism (...)”.

[h] Considering that the present Guidelines should not, under any circumstances, be construed as restricting in any way the Guidelines of 11 July 2002;

adopts the following guidelines and invites member States to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism and for the protection of the victims of terrorist acts, as well as among representatives of civil society.

9. The terms “invites member States to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism” are taken from the last sentence of the Preamble to the Guidelines of July 2002.

I. Principles

1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act can benefit from the services and measures prescribed by these Guidelines. States should also, in appropriate circumstances, ensure their availability to the victim’s close family.

10. *Definition.* Neither [the European Convention on Human Rights](#) nor the case-law of the Court gives a definition of what a victim of a terrorist act is, nor even of the word “victim”. The Court always preferred to adopt a case by case approach.

11. In the framework of the United Nations, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly (A/RES/40/34) gives the following definition:

“A. Victims of Crime

1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the

immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”

12. For its part, Article 1 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) states that for the purposes of the Framework Decision:

“(a) "victim" shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;”

13. Moreover, the Court recognises that the family of a victim can, in certain cases, be considered as a victim:

- *Cyprus v. Turkey*, 10 May 2001, § 156:

“The Court recalls that the question whether a family member of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court further recalls that the essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather in the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Çakici v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV).”

2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.

14. Paragraph 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that: “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (...)”.

3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment.

15. Paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) specifies that: “Victims should be treated with compassion and respect for their dignity. (...)”.

16. Article 2, paragraph 1, of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) states that: “Each Member State (...) shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.”.

II. Emergency assistance

States should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to victims of terrorist acts in order to cover their immediate needs; they should also allow victims, on their request, to have access to spiritual assistance.

17. Paragraph 4 of [Recommendation No. R \(87\) 21](#) of the [Committee of Ministers](#) to member States on assistance to victims and the prevention of victimisation recommends that the governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) emergency help to meet immediate needs (...)”.

18. The word “assistance” was preferred to the word “help” in particular because it is used in several articles of the European Social Charter (Revised) (CETS No. 163, of 3 May 1996): see for example Article 13 “Right to social and medical assistance”.

19. Even if the text of the European Convention of Human Rights does not expressly mention the right to health care nor the right to medical assistance, the Court has clearly indicated that, in certain cases, the State can have an obligation to provide appropriate medical assistance so as not to risk violation of Article 2 of the Convention (Right to life) or Article 3 (Prohibition of torture).

20. In its decision *Cyprus v. Turkey* of 10 May 2001, para 219, the Court indicates that:

“The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual’s life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that

Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the *L.C.B. v. the United Kingdom* judgment of 9 June 1998, Reports 1998-III, p. 1403, § 36)."

21. In its decision *Ilhan v. Turkey* of 27 June 2000, para 76:

"The Court observes that these three cases³ concerned the positive obligation on the State to protect the life of the individual from third parties or from the risk of illness under the first sentence of Article 2 § 1."

22. The Court reiterated its position in its decision *Berktaş v. Turkey* of 1 March 2001, para 154.

23. In its decision on admissibility no. 65653/01 in the case *Nitecki v. Poland* of 21 March 2002, the Court recalled that:

"The Court recalls that the first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under Article 2 (see *Powell v. the United Kingdom* [decision], no. 45305/99, 4.5.2000).

The Court has held in cases involving allegations of medical malpractice that the State's positive obligations under Article 2 to protect life include the requirement for hospitals to have regulations for the protection of their patients' lives and also the obligation to establish an effective judicial system for establishing the cause of a death which occurs in hospital and any liability on the part of the medical practitioners concerned (see, among other authorities, *Erikson v. Italy*, [decision], no. 37900/97, 26.10.1999; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002).

Furthermore, with respect to the scope of the State's positive obligations in the provision of health care, the Court has stated that an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally (see *Cyprus v. Turkey* [GC], no. 25781/94, § 219, ECHR 2001-IV)."

24. The European Commission of Human Rights recognised that, in certain specific circumstances, States had a positive obligation drawn from Article 3 of the Convention, to provide immediate medical care. In this regard, see, as concerns a detained person, in the case *Hurtado v Switzerland*, the report of the Commission in which it considered, unanimously, that the applicant had suffered violation of Article 3 by not having received immediate medical care. This case was concluded by a friendly settlement (judgment dated 28 January 1994 striking out the case). Also see the case *McGlinchey v. United Kingdom* of 29 April 2003, paragraph 46:

"Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance (see, *mutatis mutandis*, *Aerts v. Belgium*, judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq., and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI)."

³ Note from the Secretariat: These are *Osman v. United Kingdom* (decision of 28 October 1998), *Yaşa v. Turkey* (Decision of 2 September 1998) and *L.C.B. v. United Kingdom* (decision of 9 June 1998).

III. Continuing assistance

States should provide for appropriate continuing medical, psychological, social and material assistance for victims of terrorist acts; if the victim does not normally reside on the territory of the State where the terrorist act occurred, that State should co-operate with the State of residence in ensuring that the victim receives such assistance.

25. As concerns social assistance, the Court noted that a violation of Article 3 could be acknowledged, in certain specific circumstances, if a pension and the other social benefits were wholly insufficient. In this regard, see the inadmissibility decision taken by the Court in the case *Larioshina v. Russian Federation*, of 23 April 2002:

“(...) the Court considers that a complaint about a wholly insufficient amount of pension and the other social benefits may, in principle, raise an issue under Article 3 of the Convention which prohibits inhuman or degrading treatment.”

26. Paragraph 4 of Committee of Ministers Recommendation No. R (87) 21 to member States on assistance to victims and the prevention of victimisation recommends that governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) continuing medical, psychological, social and material help”.

27. As concerns the case-law of the Court, see the extracts quoted above illustrating Guideline II (Emergency Assistance) which can be applied, *mutadis mutandis*, to continuing assistance.

28. As for the European Social Charter (Revised) (CETS No. 163, of 3 May 1996) its Articles 11 and 14, provides in particular that:

Article 11 –The right to protection of health

“With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co operation with public or private organisations, to take appropriate measures designed inter alia:

- 1 to remove as far as possible the causes of ill health;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Article 14 – The right to benefit from social welfare services

“With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.”

29. Finally, Paragraph 14 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34), states that:

“Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.”

IV. Investigation

1. Where there have been victims of terrorist acts, States must launch an effective official investigation into those acts.

30. The Court recognises that there should be an official investigation when individuals have been killed as a result of the use of force and that this obligation is not confined to cases where it has been established that the killing was caused by an agent of the State:

- *Ulku Ekinici v. Turkey*, 16 July 2002, § 144:

“The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of the applicant's husband gave rise ipso facto to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death (cf. *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (cf. *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI).”

- *Tepe v. Turkey*, 9 May 2003, § 195:

“Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).”

31. Moreover, the Court recognises that the investigation must be led with promptness and reasonable expedition:

- *Finucane v. United Kingdom*, of 1 July 2003, para. 71

“70. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, Reports 1998-IV, pp. 2439-2440, §§ 102-104; *Cakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV, §§ 80, 87 and 106; *Tanrikulu v. Turkey*, cited above, § 109; *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *Hugh Jordan v. the United Kingdom*, cited above, §§ 108, 136 140).”

2. In this framework, special attention must be paid to victims, and, where appropriate, to their close family, without it being necessary for them to have made a formal complaint.

32. The Court recognises that the close family of a deceased victim must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests, failing which this investigation could not be considered “effective”:

33. *Slimani v. France*, 27 July 2004, para. 32 and 47:

[The text of this judgment is available in French only]

“32. (...) Dans le même type d'affaires, la Cour a souligné qu'il doit y avoir un élément suffisant de contrôle public de l'enquête ou de ses résultats pour garantir que les responsables aient à rendre des comptes, tant en pratique qu'en théorie. Elle a précisé que, si le degré de contrôle public requis peut varier d'une affaire à l'autre, les proches de la victime doivent, dans tous les cas, être associés à la procédure dans la mesure nécessaire à la sauvegarde de leurs intérêts légitimes (voir, notamment, l'arrêt *Hugh Jordan c. Royaume-Uni* du 4 mai 2001, no 24746/94, § 109 et les arrêts, précités, *McKerr*, § 115 et *Edwards*, § 73) ; elle estime qu'il doit en aller ainsi dès lorsqu'une personne décède entre les mains d'autorités.”

“47. Il n'en reste pas moins que, comme la Cour l'a précédemment souligné, dans tous les cas où un détenu décède dans des conditions suspectes, l'article 2 met à la charge des autorités l'obligation de conduire d'office, dès que l'affaire est portée à leur attention, une « enquête officielle et effective » de nature à permettre d'établir les causes de la mort et d'identifier les éventuels responsables de celle-ci et d'aboutir à leur punition : les autorités ne sauraient laisser aux proches du défunt l'initiative de déposer une plainte formelle ou d'assumer la responsabilité d'une procédure d'enquête. Or à cela il faut ajouter qu'une telle enquête ne saurait être qualifiée d'« effective » que si, notamment, les proches de la victime sont impliqués dans la procédure de manière propre à permettre la sauvegarde de leurs intérêts légitimes (paragraphes 29-32 ci-dessus).

Selon la Cour, exiger que les proches du défunt déposent une plainte avec constitution de partie civile pour pouvoir être impliqués dans la procédure d'enquête contredirait ces principes. Elle estime que, dès lors qu'elles ont connaissance d'un décès intervenu dans des conditions suspectes, les autorités doivent, d'office, mener une enquête, à laquelle les proches du défunt doivent, d'office également, être associés.”

34. *McKerr v. United Kingdom* of 4 May 2001, para 148 and 159-160:

“148. (...) The Court considers that the right of the family of the deceased whose death is under investigation to participate in the proceedings requires that the procedures adopted ensure the requisite

protection of their interests, which may be in direct conflict with those of the police or security forces implicated in the events. The Court is not persuaded that the applicant's interests as next-of-kin were fairly or adequately protected in this respect."

"159. (...) the Court considers that the requirements of Article 2 may nonetheless be satisfied if, while seeking to take into account other legitimate interests such as national security or the protection of material relevant to other investigations, the various procedures provide for the necessary safeguards in an accessible and effective manner. In the present case, the available procedures have not struck the right balance.

160. The Court would observe that the shortcomings in transparency and effectiveness identified above run counter to the purpose identified by the domestic courts of allaying suspicions and rumour. Proper procedures for ensuring the accountability of agents of the State are indispensable in maintaining public confidence and meeting the legitimate concerns that might arise from the use of lethal force. A lack of such procedures will only add fuel to fears of sinister motivations, as is illustrated, inter alia, by the submissions made by the applicant concerning the alleged shoot-to-kill policy."

35. Finally, with regard to the European Union, Article 10, paragraph 1, of the Council Framework Decision of 13 June 2002 on combating terrorism specifies that:

"Member States shall ensure that investigation into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State."

3. In cases where it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, States should allow victims to ask for this decision to be re-examined by a competent authority.

36. Moreover, the Court recognises the need for public scrutiny of investigation or their results:

- *Finucane v. United Kingdom*, of 1 July 2003, para. 71:

"71. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82; *Oğur v. Turkey*, cited above, § 92; *Gül v. Turkey*, cited above, § 93; and recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, cited above, § 148)."

37. Paragraph 7 of [Recommendation No. R \(85\) 11](#) of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure specifies that "the victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings".

V. Effective access to the law and to justice

States should provide effective access to the law and to justice for victims of terrorist acts by providing:

- (i) the right of access to competent courts in order to bring a civil action in support of their rights, and
- (ii) legal aid in appropriate cases.

38. The expression “effective access to the law and to justice” has been taken from [Recommendation No. R \(93\) 1](#) of the Committee of Ministers to member States on effective access to the law and to justice for the very poor.

39. Principles laid down in [Recommendation No. R \(81\) 7](#) of the Committee of Ministers on measures facilitating access to justice are applicable, *mutadis mutandis*, to victims of terrorist acts and should be implemented by all member States.

40. Finally, Paragraph 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) adopted on 29 November 1985 by the General Assembly of the United Nations, states that:

“6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

VI. Administration of justice

1. States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent tribunal within a reasonable time.

41. The Court also recognises that suspects must be judged within a reasonable time. See in particular:

- *Mutimara v. France*, 8 June 2004, §§ 69-74:

In this case, the Court found a breach of the Convention in respect of the length of proceedings concerning the examination of a complaint against a person who allegedly was involved in the genocide that took place in Rwanda.

[The text of this judgment is available in French only]

“69. La Cour rappelle que le caractère raisonnable de la durée d’une procédure s’apprécie eu égard aux critères consacrés par sa jurisprudence, en particulier la complexité de l’affaire, le comportement du requérant et celui des autorités compétentes (voir, parmi beaucoup d’autres, *Doustaly c. France* arrêt du 22 avril 1998, Recueil des arrêts et décisions 1998 II, p. 857, § 39 ; *Slimane-Kaïd c. France* (no 3), no 45130/98, § 38, 6 avril 2004) et suivant les circonstances de la cause, lesquelles commandent en l’occurrence une évaluation globale (*Versini c. France*, arrêt du 10 juillet 2001, no 40096/98, § 26 ; *Slimane-Kaïd*, précité).

70. En l’espèce, la Cour constate que la procédure, qui a débuté le 1er août 1995 (plainte avec constitution de partie civile de la requérante) est actuellement toujours pendante devant le juge d’instruction, soit une durée de huit ans et plus de huit mois à ce jour.

71. La Cour estime que l’affaire présentait une certaine complexité, ce dont atteste notamment la délivrance de nombreuses commissions rogatoires internationales. Cependant, cela ne saurait suffire, en soi, à justifier la durée de la procédure.

[...]

74. Compte tenu des circonstances de l’espèce et en dépit de leur particularité, la Cour estime que l’on ne saurait considérer comme « raisonnable » une durée globale de presque neuf ans pour une information pénale au demeurant toujours en cours.”

2. States should ensure that the position of victims of terrorist acts is adequately recognised in criminal proceedings.

42. The Court recognises that victims should be taken into consideration in criminal proceedings, in addition to their right to bring civil proceedings in order to secure at least symbolic reparation or to protect a civil right:

- *Perez v. France*, 12 February 2004 (Grand Chamber), §§ 70-72:

“70. The Court (...) notes that the Convention does not confer any right, as demanded by the applicant, to “private revenge” or to an *actio popularis*. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim’s exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p.13, § 27; *Helmets*, cited above, p. 14, § 27; and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, p. 78, § 58).

[...]

72. (In addition, the Court notes) the need to safeguard victims' rights and their proper place in criminal proceedings. Simply because the requirements inherent in the concept of a "fair trial" are not necessarily the same in disputes about civil rights and obligations as they are in cases involving criminal trials, as evidenced by the fact that for civil disputes there are no detailed provisions similar to those in Article 6 §§ 2 and 3 (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 32) does not mean that the Court can ignore the plight of victims and downgrade their rights. [...] Lastly, the Court draws attention for information to the text of Recommendations R (83) 7, R (85) 11 and R (87) 21 of the Committee of Ministers (see paragraphs 26-28 above), which clearly specify the rights which victims may assert in the context of criminal law and procedure."

43. As indicated above by the Court, [Recommendations Nos. R \(83\) 7](#), [R \(85\) 11](#) and [R \(87\) 21](#) of the Committee of Ministers recognise a number of rights that victims may claim under criminal law and in criminal proceedings. In particular, paragraph 29 of Recommendation No R (83) 7 of the Committee of Ministers to member States on participation of the public in crime policy provides that the governments of member States should assist victims by "establishing an efficient system of legal aid for victims so that they may have access to justice in all circumstances". Furthermore, paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation states that the governments of member States "ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) assistance during the criminal process, with due respect to the defence".

44. Article 6 (Specific assistance to the victim) of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) specifies: "Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings".

45. Paragraph 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) mentions that:

"The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

VII. Compensation

1. Victims of terrorist acts should receive fair and appropriate compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality.

46. Guideline No. XVII of July 2002 (Compensation for victims of terrorist acts) recalls that: “When compensation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State must contribute to the compensation of the victims of attacks that took place on its territory, as far as their person or their health is concerned.”

47. Resolution 2002/35 of the United Nations Commission on Human Rights entitled Human rights and terrorism, “welcomes the report of the Secretary-General (A/56/190), and invites him to continue to seek the views of Member States on the implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms and on how the needs and concerns of victims of terrorism might be addressed, including through the possible establishment of a voluntary fund for the victims of terrorism, as well as on ways and means to rehabilitate the victims of terrorism and to reintegrate them into society, with a view to incorporating his findings in his reports to the Commission and the General Assembly”.

48. Moreover, in its resolution 1566(2004) adopted at its 5053rd meeting on 8 October 2004, the United Nations Security Council:

“10. Requests further the working group, established under paragraph 9 to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families, which might be financed through voluntary contributions, which could consist in part of assets seized from terrorist organizations, their members and sponsors, and submit its recommendations to the Council”.

49. Finally, with regard to compensation, it is useful to recall Article 75 of the Statute of the International Criminal Court:

Article 75 Reparations to victims

“1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.”

2. Compensation should be easily accessible to victims, irrespective of nationality, and, in appropriate circumstances, to their close family. To this end, the State on the territory of which the terrorist act happened should introduce a mechanism allowing for a fair and appropriate compensation, after a simple procedure and within a reasonable time.
3. States should also facilitate administrative co-operation with the competent authorities of the member State on the territory of which a terrorist act happened to facilitate access to compensation of their nationals.
- [4. States whose nationals were victims of a terrorist act on the territory of a non-member State should contact the competent authorities of this State with a view to cooperating in order to facilitate access to compensation of these persons.]
5. Apart from the payment of pecuniary compensation, States are encouraged to consider, depending on the circumstances, other forms of [compensation] [reparation] [satisfaction].

50. Paragraph 11 of the European Union Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims states that: “A system of cooperation between authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim’s residence”.

VIII. Protection of the private and family life of victims of terrorist acts

1. States should take appropriate steps to avoid undermining respect for the private and family life of victims of terrorist acts in any way, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims.

51. Paragraph 8 of [Recommendation No. R \(85\) 11](#) of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure specifies that “at all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity”.

52. Paragraph 9 of [Recommendation No. R \(87\) 21](#) of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation calls on the governments of member States to “take steps to prevent victim assistance services from disclosing personal information regarding victims, without their consent, to third parties”.

53. In the context of the United Nations, paragraph 6, d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly (A/RES/40/34) states that:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (...)

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;”

- [2. In addition, States should encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims of terrorist acts in the framework of their information activities.⁴]
3. Victims of terrorist acts must have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.

54. [Recommendation No. \(97\) 19](#) of the Committee of Ministers to member States on the portrayal of violence in the electronic media and [Recommendation No. \(99\) 5](#) on the protection of privacy on the Internet should be mentioned in this context.

IX. Protection of the dignity and security of victims of terrorist acts

1. At all stages of the proceedings, victims of terrorist acts should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity.

⁴ This wording, which should be examined further during the 59th meeting of the CDDH (23-26 November 2004), is close in particular to that of the draft Declaration on freedom of expression and information in the media in the context of the fight against terrorism currently examined by the Steering Committee of the Mass Media (CDMM).

55. The first paragraph is partly inspired by paragraph 8 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure which specifies that “at all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity”.

2. States must ensure the protection, security and anonymity of victims of terrorist acts, in particular where they intervene as witnesses.

56. Paragraph 6, d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (...)

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;”

X. Information of the victims of terrorist acts

States should give information, according to appropriate measures, to victims of terrorist acts about the act of which they suffered, except in the case where victims indicate that they do not wish to receive such information. For this purpose, States should:

57. The Court recognises that, in certain circumstances, a family member of a “disappeared person” may suffer inhuman treatment, within the meaning of Article 3 of the Convention, if the State authorities remain silent despite attempts to obtain information about the disappeared person.

- *Cyprus v. Turkey*, 10 May 2001, §§ 156-157:

“156. [...] The Court recalls that the question whether a family member of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include [...] the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. [...]

157. [...] For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3.”

- (i) set up appropriate information contact points for the victims, concerning in particular their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation;

58. Paragraph 2 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure states that “the police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and State compensation”.

59. Paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation provides that the governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) information on the victim's rights”.

- (ii) ensure the provision to the victims, if they wish so, of appropriate information in particular about the investigations, the final decision concerning in particular prosecution, the date and place of the hearings, the conditions under which they may acquaint themselves with the decisions handed down.

60. Paragraph 3 of Committee of Ministers Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that “the victim should be able to obtain information on the outcome of the police investigation”.

61. Paragraph 6 of this same Recommendation adds that “the victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information”.

62. Finally, paragraph 9 of Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that “the victim should be informed of: the date and place of a hearing concerning an offence which caused him suffering; his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice; how he can find out the outcome of the case”.

63. Article 4 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) on the “Right to receive information” specifies in particular that “Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to

the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary”.

XI. Specific training for persons responsible for assisting victims of terrorist acts

States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.

64. Paragraph 11 of the preamble of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) provides that “suitable and adequate training should be given to persons coming into contact with victims, as this is essential both for victims and for achieving the purposes of proceedings”. Article 14 of this same framework decision specifies:

Article 14

Training for personnel involved in proceedings or otherwise in contact with victims

“1. Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.

2. Paragraph 1 shall apply in particular to police officers and legal practitioners.”

65. Paragraph 16 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on 29 November 1985 by the General Assembly of the United Nations (A/RES/40/34) states that: “Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.”.

XII. Increased protection

Nothing in these Guidelines restrains States from adopting more favourable services and measures than described in these Guidelines.

* * *